

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7764**

**BILL NUMBER:** SB 575

**NOTE PREPARED:** Mar 1, 2005

**BILL AMENDED:** Feb 28, 2005

**SUBJECT:** Archaeology.

**FIRST AUTHOR:** Sen. Merritt

**FIRST SPONSOR:** Rep. Pierce

**BILL STATUS:** As Passed Senate

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) *Definition of Artifact*. This bill defines "artifact" as a significant object made by a human before December 31, 1870.

*Violations and Penalties.* The bill requires a person who disturbs buried human remains or artifacts to cease disturbing the area within 100 feet of the remains or artifacts. It allows certain persons to accompany a conservation officer to investigate a violation of a historic preservation and archeology law. It establishes a Class A infraction for violating certain duties concerning the unintentional discovery of artifacts. It allows the court to order restitution for certain costs related to the violation of the historic preservation and archeology law. It establishes a Class D felony for possession of looted property and a Class C felony if the cost of carrying out an archeological investigation on the site that was damaged to obtain the looted property is more than \$100,000.

*Confidentiality of Historic Sites.* It allows confidentiality of location information of historical or archeological sites.

*Fund to Assist Homeowners.* The bill establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with a plan. The bill provides that a disinterment under a plan is exempt from other disinterment procedures.

*Historic and Archeological Site Data Base Advisory Task Force.* It establishes the Historic and Archeological Site Data Base Advisory Task Force.

*Conforming Changes.* It makes conforming changes. It repeals chapter definition of "conservation officer" and applies the definition throughout the natural resources title. (The introduced version of this bill was prepared by the Natural Resources Study Committee.)

**Effective Date:** Upon passage; July 1, 2005.

**Explanation of State Expenditures:** (Revised) *Definition of Artifact.* The bill defines "artifact" as a significant object made by a human before December 31, 1870. Under existing law, an artifact is an object made before December 11, 1816. The bill would expand the number of objects that would fall under the DNR jurisdiction. However, the DNR will be able to absorb any additional costs associated with this provision given its current budget and resources.

*Confidentiality of Historic Sites.* The proposal provides that the DNR Division of Historic Preservation and Archeology may keep reports and information concerning the location of historic and archeological sites confidential if the division director determines that disclosure would likely risk harm to the historic or archeological site; cause a significant invasion of privacy; or impede the use of a traditional religious site by practitioners. The division may not disclose reports and information required to be confidential under federal law. If the division director determines that reports and information should be confidential, the DNR director, in consultation with the division director, must determine who may have access to the confidential reports and information. These provisions could increase administrative expenses for the DNR. However, the DNR should be able to absorb any additional expense given its current budget and resources.

*Notifying DNR.* Under existing law, a person who disturbs buried human remains must notify the DNR within two business days of the time of the disturbance and treat or rebury the remains according to rules adopted by the Natural Resources Commission or a court order and permit issued by the State Department of Health. Under the proposal, the person must immediately cease disturbing the human remains and the area within 100 feet of the human remains; notify the DNR within 2 business days; refrain from covering over the human remains; submit a development plan to the DNR; and treat or rebury the human remains according to rules adopted by the Commission or a court order and permit issued by the State Department of Health. Adding additional requirements could result in additional violations. A person who recklessly, knowingly, or intentionally violates these provisions commits a Class A misdemeanor.

Under existing law, a person who discovers an artifact or burial object while disturbing the ground for a purpose other than the discovery of artifacts or burial objects must immediately cease disturbing the ground and notify the DNR within two business days. After notification, the DNR may authorize the person to continue the ground disturbing activity or require that continued ground disturbance be conducted only in accordance with an approved plan. The DNR has 30 days to make a determination. Under the proposal, the person who discovers an artifact or burial object must immediately cease disturbing the ground and the area within 100 feet of the artifact or burial object. The person must also refrain from covering over the artifact or burial object. The person must also notify the DNR within two business days. Persons who violate these additional requirements commit a Class A infraction.

*Determination of a Violation.* The proposal provides that an employee of the Division of Historic Preservation and Archeology or a person authorized by the DNR may accompany a conservation officer on public or private property to determine if there is a violation. This provision could increase expenses to the DNR; however, it is presumed that the DNR will be able to absorb any additional expense given its current budget and resources or through the reallocation of current resources.

*Program to Assist Homeowners.* Under the proposal, the division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The division may conduct the program alone or by entering into an agreement with a historical society, the Historic Landmarks Foundation, a professional archeologist or historian, or any other entity that the division selects. These provisions may increase expenses for the division. However, the bill provides that in conducting a program, the division may receive gifts and grants under terms, obligations, and liabilities that the division director considers appropriate. The director must use a gift or grant for the program.

*Archeology Preservation Trust Fund.* The Auditor of State must establish the Archeology Preservation Trust Fund for purposes of holding money received for the program. The division director must administer the fund. Expenses of administering the fund must be paid from money in the fund. The Treasurer of State must invest the money in the Archeology Preservation Trust Fund that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The Treasurer must deposit in the fund the interest that accrues from the investment of the trust fund. Money in the trust fund at the end of a state fiscal year does not revert to the state General Fund. There is annually appropriated to the division the money in the trust fund. The division may adopt rules to govern the administration of the fund program and provisions.

The bill also provides that in addition to a sentence imposed for a felony or misdemeanor; or judgment imposed for an infraction; and an order for restitution to a victim, the court may order an individual to make restitution to the trust fund. The court must forward a copy of an order for restitution to the division.

*The Historic and Archeological Site Data Base Advisory Task Force.* This bill establishes the Historic and Archeological Site Data Base Advisory Task Force. The task force consists of 10 individuals (or designees): the DNR director; the State Archeologist; the State Geologist; the Commissioner of the Indiana Department of Transportation; three individuals from Indiana universities or colleges who have expertise in geographic information systems, public information technology, information management, or other similar expertise; and three archeologists. Members of the task force are not entitled to per diem or travel reimbursement.

The task force must advise the DNR on the creation of an integrated data base of historic and archeological sites, including cemeteries and burial grounds and associated documentation. The task force must also investigate ways the data base can be developed and operated in collaboration with universities and other state entities and ways to limit access to prevent damage, looting, or destruction of a historic site; and invasion of privacy to a property owner.

The DNR must provide staff support for the task force. The DNR must provide the Natural Resources Study Committee with an annual progress report. The task force must complete its work by July 1, 2007. These provisions will increase administrative expenses for the DNR; however, the DNR should be able to absorb any additional expenses associated with these provisions.

*Penalty Provisions.* The offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense. Possession of looted property is also a Class D felony. If the property is worth more than \$100,000, the violation is a Class C felony.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. A Class C felony is punishable by

a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$21,514 in FY 2004, ranging from a low of \$16,645 to a high of \$49,281. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$59,574, with the costs ranging from a low of \$52,420 to a high of \$77,674. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

**Explanation of State Revenues:** *Penalty Provisions.* The bill establishes a Class A infraction for violating certain duties concerning the unintentional discovery of artifacts. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class A infraction is \$10,000, which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

The maximum fine for Class C or a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** (Revised) *Penalty Provisions.* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44. More alleged felony defendants could be detained in county jails prior to their court hearings.

**Explanation of Local Revenues:** *Penalty Provisions.* With respect to infractions, if additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

With respect to felonies, if additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** Department of Correction; DNR.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Indiana Sheriffs' Association, Department of Correction.

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